**Kloepfers Floor Covering, Inc., and its alter ego, Dynamic Floor Design, Inc. *and* United Brotherhood of Carpenters and Joiners of America, Local #9.** Case 3–CA–22088

March 9, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

Upon a charge filed by the Union on August 20, 1999, a first amended charge filed by the Union on October 13, 1999, and a second amended charge filed by the Union on October 28, 1999, the General Counsel of the National Labor Relations Board issued a complaint on November 16, 1999, against Kloepfers Floor Covering, Inc. and its alter ego, Dynamic Floor Design, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondents failed to file an answer.

On January 12, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On January 13, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 21, 1999, notified the Respondents that unless an answer were received by January 4, 2000, a Motion for Summary Judgment would be filed.

The Motion for Summary Judgment also states without contradiction that the Respondents, by Gregory A. Kloepfer, president, sent a letter to the Region, dated December 30, 1999, stating, in relevant part, that "in regards to the letter I received Dec 21, 1999, the allegations are untrue." Kloepfer's letter also requested a jury trial and a court appointed attorney.

It is uncontroverted that on January 6, 2000, counsel for the General Counsel contacted Kloepfer by telephone and informed him that the letter he had submitted was not an adequate answer to the complaint pursuant to requirements of the Board's Rules and Regulations because the allegations of the complaint were not specifically admitted or denied. Counsel for the General Counsel also advised Kloepfer that the Region intended to file a Motion for Summary Judgment, provided him with an explanation of the meaning of the motion, and informed him that there was no jury trial or court appointed attorney available in Board proceedings. Although Kloepfer mentioned that he might secure an attorney, he did not request an extension of time to file an answer.

We find that the Respondents' December 30, 1999 letter to the Region does not constitute a proper answer to the complaint allegations under Section 102.20 of the Board's Rules and Regulations because it fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's rules. See *Eckert Fire Protection Co.*, 329 NLRB 920 (1999), and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondents Kloepfers Floor Covering, Inc., and Dynamic Floor Design, Inc., have been affiliated business enterprises with common officers, ownership, directors, management and supervision, engaged in the same type of business in the same labor market. During this relevant time, the Respondents have administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel, materials, equipment, and supplies with each other; and have held themselves out to the public as a single-integrated business enterprise. Based on the conduct described above, we find that Respondent Kloepfers Floor Covering, Inc., and Respondent Dynamic Floor Design, Inc., are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

At all material times, the Respondents, corporations with an office and place of business in West Seneca, New York (Respondents' facility), have been engaged in

[1] In the complaint, the General Counsel seeks an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amount of backpay due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form.

The order makes clear that electronic documents, if they exist, must be supplied. See *Bryant & Stratton Business Institute*, 327 NLRB 1135 fn. 3 (1999). With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary backpay records at the office designated by the Board or its agents, we find that the question whether this change should be made in the Board's standard order language should be addressed after full opportunity for briefing by affected parties and that this is therefore not an appropriate case in which to make that determination. We therefore decline to include that requirement in the Order.

commercial and residential floor covering installation in the building and construction industry. During the 12 months preceding issuance of the complaint, the Respondents, in conducting their business operations described above, provided services valued in excess of $50,000 to Olean General Hospital, an enterprise directly engaged in interstate commerce. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Gregory A. Kloepfer, president of both Respondent Kloepfers Floor Covering and Respondent Dynamic Floor Design, has been a supervisor of the Respondents within the meaning of Section 2(11) of the Act and an agent of the Respondents within the meaning of Section 2(13) of the Act.

The following employees of the Respondents (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees who perform, in whole or in part, all work and services traditionally considered within the work jurisdiction of the Union as described in Article I (Jurisdiction) of the collective bargaining agreement between Floor Covering Contractors of Buffalo, New York and the Union, effective May 15, 1999 to May 14, 2002.

At all material times, Floor Covering Contractors of Buffalo, New York (the Association), has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. At all material times, the Respondents have not been members of the Association.

On about May 15, 1999, the Association and the Union entered into a collective-bargaining agreement (the Association Agreement), effective from May 15, 1999, to May 14, 2002.

On about July 16, 1997, Respondent Kloepfers Floor Covering, an employer engaged in the building and construction industry as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period of May 15, 1999, to May 14, 2002.

On about June 15, 1999, Respondent Kloepfers Floor Covering, by Gregory A. Kloepfer, signed an agreement, whereby it agreed to be bound by and abide by the terms, conditions, and provisions of the Association Agreement.

For the period from May 15, 1999, to May 14, 2002, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about July 12, 1999, the Respondents have refused to bargain collectively with the Union by failing and refusing to apply the terms of the collective-bargaining agreement referred to above, when they were performing commercial work.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for purposes of collective bargaining.

The Respondents engaged in the conduct described above without prior notice to the Union, without the consent of the Union, and without affording the Union an opportunity to bargain with the Respondents with respect to this conduct and the effects of this conduct.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondents have failed and refused to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order the Respondents to recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the unit employees, to comply with the 1999–2002 Association Agreement, and to make whole the unit employees for any loss of wages or earnings they may have suffered as a result of the Respondents' failure to do so since July 12, 1999, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 52 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondents to make all contractually required delinquent contributions and to reimburse the Union and/or benefit funds for its failure to do so since July 12, 1999, including any additional amounts due on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle*

*Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2]

ORDER

The National Labor Relations Board orders that the Respondents, Kloepfers Floor Covering, Inc. and its alter ego, Dynamic Floor Design, Inc., West Seneca, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Brotherhood of Carpenters and Joiners of America, Local #9, as the limited exclusive collective-bargaining representative of the employees in the following unit:

> All employees who perform, in whole or in part, all work and services traditionally considered within the work jurisdiction of the Union as described in Article I (Jurisdiction) of the collective bargaining agreement between Floor Covering Contractors of Buffalo, New York and the Union, effective May 15, 1999 to May 14, 2002.

(b) Failing and refusing to comply with the 1999–2002 collective-bargaining agreement between the Floor Covering Contractors of Buffalo, New York and the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with United Brotherhood of Carpenters and Joiners of America, Local #9, as the limited exclusive collective-bargaining representative of the employees in the unit set forth above, and comply with the terms and conditions of the 1999–2002 collective-bargaining agreement.

(b) Make whole the unit employees for any loss of wages or earnings they may have suffered as a result of their unlawful conduct and by making the required contributions that have not been made since July 12, 1999, and by reimbursing them for any expenses ensuing from their failure to make the required contributions, as set forth in the remedy section of this decision.

(c) Make all contractually required contributions and reimburse the Union and/or benefit funds for their failure to do so since July 12, 1999, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at their facility in West Seneca, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 12, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

MEMBER BRAME, dissenting.

I would deny the General Counsel's Motion for Summary Judgment. Here, in response to the Region's request for an answer to the complaint, the Respondents' president, Kloepfer, submitted a letter on December 30, 1999, to the Region stating that "the allegations are untrue." Contrary to the majority, I find that this letter is a sufficient denial of the complaint allegations to put them at issue and require the General Counsel to prove them at a hearing. Accordingly, consistent with my dissenting position in *Eckert Fire Protection Co.*, 329 NLRB at 921, I would not preclude these Respondents from an opportunity to defend against the complaint allegations at a hearing, particularly as the Respondents apparently are unrepresented by counsel in this proceeding.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX
### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain with United Brotherhood of Carpenters and Joiners of America, Local #9, as the limited exclusive collective-bargaining representative of the employees in the following unit:

> All employees who perform, in whole or in part, all work and services traditionally considered within the work jurisdiction of the Union as described in Article I (Jurisdiction) of the collective bargaining agreement between Floor Covering Contractors of Buffalo, New York and the Union, effective May 15, 1999 to May 14, 2002.

WE WILL NOT fail and refuse to comply with the 1999–2002 collective-bargaining agreement between the Floor Covering Contractors of Buffalo, New York, and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with United Brotherhood of Carpenters and Joiners of America, Local #9, as the limited exclusive collective-bargaining representative of the employees in the unit set forth above, and comply with the terms and conditions of the 1999–2002 collective-bargaining agreement.

WE WILL make whole the unit employees for any loss of wages or earnings they may have suffered as a result of our unlawful conduct and by making the required contributions that have not been made since July 12, 1999, and by reimbursing them for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL make all contractually required contributions and reimburse the Union and/or benefit funds for our failure to do so since July 12, 1999, with interest.

KLOEPFERS FLOOR COVERING, INC, AND ITS ALTER EGO, DYNAMIC FLOOR DESIGN, INC.